

Neil M. Kliebenstein (#226060)
Lucina Rios (#325856)
BOWMAN AND BROOKE LLP
1741 Technology Drive, Suite 200
San Jose, CA 95110-1364
Telephone: (408) 279-5393
Facsimile: (408) 279-5845
Neil.kliebenstein@bowmanandbrooke.com
Lucina.rios@bowmanandbrooke.com

Attorneys for Defendant
Takeuchi Mfg. Co. (U.S.), Ltd.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN BROWN, an individual,

Plaintiff,

vs.

TAKEUCHI MFG. CO. (U.S.), LTD, a
foreign entity; TAKEUCHI MFG, CO. LTD.,
a foreign entity; UNITED RENTALS
(NORTH AMERICA), INC., a Delaware
Corporation; UNITED RENTALS INC., a
Delaware Corporation; AND DOES 1 through
50, INCLUSIVE,

Defendant(s).

Case No. 2:21-cv-00392-JAM-DMC

STIPULATED PROTECTIVE ORDER

I. PURPOSES AND LIMITATIONS

A. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal

1 principles.

2 **II. GOOD CAUSE STATEMENT**

3 This action is likely to involve trade secrets, customer information, and other valuable
4 research, development, commercial, financial, technical and/or proprietary information for which
5 special protection from public disclosure and from use for any purpose other than prosecution of
6 this action is warranted. Such confidential and proprietary materials and information consist of,
7 among other things, confidential business or financial information, information regarding
8 confidential business practices, or other confidential research, development, or commercial
9 information (including information implicating privacy rights of third parties), information
10 otherwise generally unavailable to the public, or which may be privileged or otherwise protected
11 from disclosure under state or federal statutes, court rules, case decisions, or common law.
12 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes
13 over confidentiality of discovery materials, to adequately protect information the parties are
14 entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of
15 such material in preparation for and in the conduct of trial, to address their handling at the end of
16 the litigation, and serve the ends of justice, a protective order for such information is justified in
17 this matter. It is the intent of the parties that information will not be designated as confidential for
18 tactical reasons and that nothing be so designated without a good faith belief that it has been
19 maintained in a confidential, non-public manner, and there is good cause why it should not be part
20 of the public record of this case.

21 **III. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL**

22 The parties further acknowledge that this Stipulated Protective Order does not entitle them
23 to file confidential information under seal; Local Civil Rule 141 sets forth the procedures that must
24 be followed and the standards that will be applied when a party seeks permission from the court to
25 file material under seal.

26 There is a strong presumption that the public has a right of access to judicial proceedings
27 and records in civil cases. In connection with non-dispositive motions, good cause must be shown
28 to support a filing under seal. See Kamakana v. City and County of Honolulu, 447 F.3d 1172,

1 1176 (9th Cir. 2006), Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002),
 2 Makar-Welbon v. Sony Electronics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
 3 protective orders require good cause showing), and a specific showing of good cause or compelling
 4 reasons with proper evidentiary support and legal justification, must be made with respect to
 5 Protected Material that a party seeks to file under seal. The parties' mere designation of Disclosure
 6 or Discovery Material as CONFIDENTIAL does not—without the submission of competent
 7 evidence by declaration, establishing that the material sought to be filed under seal qualifies as
 8 confidential, privileged, or otherwise protectable—constitute good cause.

9 Further, if a party requests sealing related to a dispositive motion or trial, then compelling
 10 reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly
 11 tailored to serve the specific interest to be protected. See Pintos v. Pacific Creditors Ass'n., 605
 12 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought
 13 to be filed or introduced under seal in connection with a dispositive motion or trial, the party
 14 seeking protection must articulate compelling reasons, supported by specific facts and legal
 15 justification, for the requested sealing order. Again, competent evidence supporting the
 16 application to file documents under seal must be provided by declaration.

17 Any document that is not confidential, privileged, or otherwise protectable in its entirety
 18 will not be filed under seal if the confidential portions can be redacted. If documents can be
 19 redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or
 20 otherwise protectable portions of the document, shall be filed. Any application that seeks to file
 21 documents under seal in their entirety should include an explanation of why redaction is not
 22 feasible.

23 **IV. DEFINITIONS**

24 A. Action: John Brown v. Takeuchi Mfg. Co. (U.S.), Ltd., et. al., United States District
 25 Court — Eastern District, Case No. 2:21-cv-00392-JAM-DMC.

26 B. Challenging Party: a Party or Non-Party that challenges the designation of
 27 information or items under this Order.

28 C. “CONFIDENTIAL” Information or Items: information (regardless of how it is

1 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
2 of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

3 D. Counsel: Outside Counsel of Record and House Counsel (as well as their support
4 staff).

5 E. Designating Party: a Party or Non-Party that designates information or items that
6 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

7 F. Disclosure or Discovery Material: all items or information, regardless of the
8 medium or manner in which it is generated, stored, or maintained (including, among other things,
9 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
10 responses to discovery in this matter.

11 G. Expert: a person with specialized knowledge or experience in a matter pertinent to
12 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
13 consultant in this Action.

14 H. House Counsel: attorneys who are employees of a party to this Action. House
15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16 I. Non-Party: any natural person, partnership, corporation, association or other legal
17 entity not named as a Party to this action.

18 J. Outside Counsel of Record: attorneys who are not employees of a party to this
19 Action but are retained to represent or advise a party to this Action and have appeared in this
20 Action on behalf of that party or are affiliated with a law firm that has appeared on behalf of that
21 party, and includes support staff.

22 K. Party: any party to this Action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 L. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
25 Material in this Action.

26 M. Professional Vendors: persons or entities that provide litigation support services
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
28 organizing, storing, or retrieving data in any form or medium) and their employees and

1 subcontractors.

2 N. Protected Material: any Disclosure or Discovery Material that is designated as
3 “CONFIDENTIAL.”

4 O. Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 **V. SCOPE**

7 A. The protections conferred by this Stipulation and Order cover not only Protected
8 Material (as defined above), but also (1) any information copied or extracted from Protected
9 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
10 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
11 Material.

12 B. Any use of Protected Material at trial shall be governed by the orders of the trial
13 judge. This Order does not govern the use of Protected Material at trial.

14 **VI. DURATION**

15 A. Once a case proceeds to trial, information that was designated as CONFIDENTIAL
16 or maintained pursuant to this protective order used or introduced as an exhibit at trial becomes
17 public and will be presumptively available to all members of the public, including the press, unless
18 compelling reasons supported by specific factual findings to proceed otherwise are made to the
19 trial judge in advance of the trial. See *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good
20 cause” showing for sealing documents produced in discovery from “compelling reasons” standard
21 when merits-related documents are part of court record). Accordingly, the terms of this protective
22 order do not extend beyond the commencement of the trial.

23 **VII. DESIGNATING PROTECTED MATERIAL**

24 A. Exercise of Restraint and Care in Designating Material for Protection.

25 1. Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that qualifies under the
27 appropriate standards. The Designating Party must designate for protection only those parts of
28 material, documents, items or oral or written communications that qualify so that other portions of

1 the material, documents, items or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

3 2. Mass, indiscriminate or routinized designations are prohibited.
4 Designations that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary
6 expenses and burdens on other parties) may expose the Designating Party to sanctions.

7 3. If it comes to a Designating Party's attention that information or items that
8 it designated for protection do not qualify for protection, that Designating Party must promptly
9 notify all other Parties that it is withdrawing the inapplicable designation.

10 B. Manner and Timing of Designations.

11 1. Except as otherwise provided in this Order (see, e.g., second paragraph of
12 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that
13 qualifies for protection under this Order must be clearly so designated before the material is
14 disclosed or produced.

15 2. Designation in conformity with this Order requires:

16 a. For information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
18 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
19 "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion of
20 the material on a page qualifies for protection, the Producing Party also must clearly identify the
21 protected portion(s) (e.g., by making appropriate markings in the margins).

22 b. A Party or Non-Party that makes original documents available for
23 inspection need not designate them for protection until after the inspecting Party has indicated
24 which documents it would like copied and produced. During the inspection and before the
25 designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL."
26 After the inspecting Party has identified the documents it wants copied and produced, the
27 Producing Party must determine which documents, or portions thereof, qualify for protection under
28 this Order. Then, before producing the specified documents, the Producing Party must affix the

“CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

c. for testimony given in depositions that the Designating Party identifies the Disclosure or Discovery Material on the record, before the close of the deposition all protected testimony.

d. for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

C. Inadvertent Failures to Designate

1. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

VIII. CHALLENGING CONFIDENTIALITY DESIGNATIONS

A. Timing of Challenges.

1. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

B. Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 251 et seq.

1. Joint Stipulation. Any challenge submitted to the Court shall be via a joint statement pursuant to Local Rule 251 et seq.

C. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party

1 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
 2 designation, all parties shall continue to afford the material in question the level of protection to
 3 which it is entitled under the Producing Party's designation until the Court rules on the challenge.

4 **IX. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 **A. Basic Principles**

6 1. Receiving Party may use Protected Material that is disclosed or produced
 7 by another Party or by a Non-Party in connection with this Action only for prosecuting, defending
 8 or attempting to settle this Action. Such Protected Material may be disclosed only to the categories
 9 of persons and under the conditions described in this Order. When the Action has been terminated,
 10 a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

11 2. Protected Material must be stored and maintained by a Receiving Party at a
 12 location and in a secure manner that ensures that access is limited to the persons authorized under
 13 this Order.

14 **B. Disclosure of "CONFIDENTIAL" Information or Items.**

15 1. Unless otherwise ordered by the court or permitted in writing by the
 16 Designating Party, a Receiving Party may disclose any information or item designated
 17 "CONFIDENTIAL" only to:

18 a. The Receiving Party's Outside Counsel of Record in this Action, as
 19 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to
 20 disclose the information for this Action;

21 b. the officers, directors, and employees (including House Counsel) of
 22 the Receiving Party to whom disclosure is reasonably necessary for this Action;

23 c. Experts (as defined in this Order) of the Receiving Party to whom
 24 disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and
 25 Agreement to Be Bound" (Exhibit A);

26 d. the court and its personnel;

27 e. court reporters and their staff;

28 f. professional jury or trial consultants, mock jurors, and Professional

Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

g. the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

h. during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.

Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

i. any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions;

X. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

2. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

3. cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the

subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

XI. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

B. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party, if requested.

C. If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination

by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

XII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

A. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

XIII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

A. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

XIV. MISCELLANEOUS

A. Right to Further Relief.

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections.

2. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any

1 ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
2 object on any ground to use in evidence of any of the material covered by this Protective Order.

3 C. Filing Protected Material.

4 3. A Party that seeks to file under seal any Protected Material must comply
5 with Local Civil Rule 141. Protected Material may only be filed under seal pursuant to a court
6 order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file
7 Protected Material under seal is denied by the court, then the Receiving Party may file the
8 information in the public record unless otherwise instructed by the court.

9 **XV. FINAL DISPOSITION**

10 A. After the final disposition of this Action, as defined in paragraph 4, within 60 days
11 of a written request by the Designating Party, each Receiving Party must return all Protected
12 Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected
13 Material" includes all copies, abstracts, compilations, summaries, and any other format
14 reproducing or capturing any of the Protected Material. Whether the Protected Material is returned
15 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and,
16 if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
17 (by category, where appropriate) all the Protected Material that was returned or destroyed and (2)
18 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries
19 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this
20 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
21 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial
22 exhibits, expert reports, attorney work product, and consultant and expert work product, even if
23 such materials contain Protected Material. Any such archival copies that contain or constitute
24 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

25 B. Any violation of this Order may be punished by appropriate measures including,
26 without limitation, contempt proceedings and/or monetary sanctions.

27 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
28

1 DATED: November 24, 2023

ACQUEST LAW, INC.

2
3 By: /s/
Nareshwar Singh Virdi
4 Attorneys for Plaintiff
JOHN BROWN

5 DATED: November 21, 2023

GORDON & REES LLP

6
7 By: /s/
8 John Sager
Kristin A. Blocher
9 David A. Serrano
Attorneys for Defendants
10 UNITED RENTALS (NORTH AMERICA),
INC. AND UNITED RENTALS INC.

11 DATED: December 19, 2023

BOWMAN AND BROOKE LLP

12
13 BY: /s/
14 Neil M. Kliebenstein
Lucina Rios
15 Attorneys for Defendant
TAKEUCHI MFG. CO. (U.S.), LTD
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of John Brown v. Takeuchi Mfg. Co. (U.S.), Ltd., et. al., United States District Court—Eastern District, Case No. 2:21-cv-00392-JAM-DMC, I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

1 **FOR GOOD CAUSE SHOWN, THE FOREGOING STIPULATED PROTECTIVE**
2 **ORDER, WHICH HAS BEEN SIGNED BY COUNSEL FOR ALL PARTIES, ECF No.**
3 **122, IS APPROVED.**

4 **Dated: December 20, 2023**

A handwritten signature in dark ink, appearing to read 'Dennis M. Cota', written over a horizontal line.

DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE